NOTICE OF DISSOLUTION OF PARTNERSHIP.—The dissolution of a partnership, whether by agreement or by operation of law, terminates the general authority which each partner has to act for the others in the course of the firm business, and substitutes an agency limited in scope to the winding up of the affairs of the partnership. But the responsibility of the firm as a collection of individuals has created a certain credit relation with the business world, and it is only fair to assume that the personnel of the firm will continue the same until some notice of the change is given.[1] The rules as to the notice of the termination of a partnership necessary to relieve one partner from liability for the acts of the others after dissolution are well crystalized and do not vary much in application: (1) when the dissolution is effected by operation of law, as by death[2] or bankruptcy[3] of one of the partners, or by war,[4] no notice is required, since the general notoriety of the event charges everyone with knowledge of the changed conditions and is sufficient to put all upon inquiry as to future transactions; (2) where the dissolution is by act of the parties the element of notoriety is generally lacking,[5] and those who have had former business transactions with the firm are entitled to actual notice of the dissolution,[6] so that they will not extend credit relying upon the continued existence

[1]Austin *v.* Holland (1877) 69 N. Y. 571. The necessity for notice of dissolution has been rested on negligence, 3 Kent, Comm., *66, and on a true estoppel. See Elverson *v.* Leeds (1884) 97 Ind 336. The principle of estoppel applies not only to actual partnerships but also to cases where business is done in one man's name by his successor. Elverson *v.* Leeds *supra; cf.* Willis *v.* Rector (1892) 50 Fed. 684.

[2]Marlett *v.* Jackman (Mass. 1861) 3 Allen 287.

[3]Eustis *v.* Bolles (1888) 146 Mass. 413.

[4]Griswold *v.* Waddington (N. Y. 1819) 16 Johns. 438.

[5]Even where the dissolution is by the act of the parties, the event may be sufficiently notorious for the jury to find actual notice. Treadwell *v.* Wells (1854) 4 Cal. 260; *contra,* Werner *v.* Calhoun (1904) 55 W. Va. 246.

[6]It is sometimes difficult to determine who is a former dealer within this rule and therefore entitled to actual notice. Deering *v.* Flanders (1870) 49 N. H. 225. One who has merely purchased goods is not a former dealer, Askew *v.* Silman (1895) 95 Ga. 678, nor is a bank which discounts a firm note for the payee, see City Bank *v.* McChesney (1859) 20 N. Y. 240, unless the transaction has been repeated so often that the bank may be taken to have dealt directly with the credit of the firm. Vernon *v.* Manhattan Co. (N. Y. 1839) 22 Wend. 183. In the case last cited, at page 190, the court said: "In reference to this rule, the word 'dealing' is merely used as a general term to convey the idea that the person who is entitled to actual notice of the dissolution must be one who has had business relations with the firm, by which a credit is raised upon the faith of the copartnership." A bank discounting a note directly for the firm maker is a former dealer. Bank *v.* Norton (N. Y. 1841) 1 Hill 572.

The English Partnership Act of 1890, § 36 (2), after providing for publication in two specified newspapers says, such publication "shall be notice as to persons who had not dealings with the firm *before the date of the dissolution* or change so advertised." The use of the italicized words seems to leave unprotected one who deals with a firm for the first time after dissolution and then before notice is published has further dealing with the firm. This seemed unfair to the draftsmen of Draft D of the proposed American Act and in a foot note to § 42 (*b*) it is suggested that such a dealer is really a former dealer and entitled to actual notice. The effect of this of course is to include in the class of former dealers all who have dealt with the firm before notice is published.

of the old firm;[7] (3) constructive notice by publication is sufficient to apprise new dealers of the facts, since it is impossible to actually communicate the change to all the world;[8] (4) actual knowledge, of course, removes the necessity for notice, either actual or constructive,[9] as was held in the recent case of *Union National Bank* v. *Dean* (1913) 139 N. Y. Supp. 835.

The courts agree that on the retirement of a dormant partner, notice of dissolution to either former or new dealers is unnecessary;[10] they are not unanimous, however, in determining whether a partner is dormant. Some jurisdictions maintain that a member of a firm is a dormant partner when his connection with the business is secret as

[7]Clapp *v.* Rogers (1855) 12 N. Y. 283; Austin *v.* Holland *supra.* This is true even if the firm is dissolved by expiration of the time for which it was formed, Ketcham *v.* Clark (N. Y. 1810) 6 Johns. 144, though knowledge that the partnership was created for a limited time places the creditor upon inquiry. Schlater *v.* Winpenny (1874) 75 Pa. 321. Notice in due course is all that can be expected of a retiring partner, as he cannot be compelled to enjoin the use of the firm name. Newsome *v.* Coles (1811) 2 Camp. 617.

Proof of mailing notice creates merely a presumption of fact as to actual notice. Meyer *v.* Krohn (1885) 114 Ill. 574. The lapse of time from dissolution, Coddington *v.* Hunt (N. Y. 1844) 6 Hill 595, or the fact that the creditor was a subscriber to a newspaper containing notice, Treadwell *v.* Carter *supra; contra,* Reilly *v.* Smith (1861) 16 La. Ann. 31, may also justify an inference of actual notice. Where the name of a banking firm was changed on its checks and the new checks were used by the depositor, this was held sufficient notice, Barfoot *v.* Goodall (1811) 3 Camp. 146, though sending a circular letter would be the better course. See Jenkins *v.* Blizard (1816) 1 Stark. 418.

Actual notice may also be inferred from a change in the firm name, but it must be such as to indicate that the very person sought to be charged has withdrawn. Amer. Linen Thread Co. *v.* Wortendyke (1862) 24 N. Y. 550; Thayer *v.* Goss (1895) 91 Wis. 90.

[8]The duty of giving notice by publication is rigidly enforced even though compliance by notice in a newspaper is impossible. Martin *v.* Searles (1859) 28 Conn. 43. As in the case of actual notice, see note 5 *ante,* evidence of notoriety of dissolution should go to the jury and they may infer sufficient constructive notice. Lovejoy *v.* Spafford (1876) 93 U. S. 430; *contra,* Pitcher *v.* Barrows (Mass. 1835) 17 Pick. 361.

No particular form of notice is required and an editorial note would seem sufficient, Askew *v.* Silman *supra;* but see Citizens Nat. Bk. *v.* Weston (1900) 162 N. Y. 113, where the court intimates that a formal notice is necessary. Notice to two commercial agencies is not good as public notice. Bank *v.* Weston (1899) 159 N. Y. 201. Statutes have been enacted in some jurisdictions requiring notice to be published in every county where the partnership had a place of business. See Civil Code of California, § 2453. See also note 6 *supra.*

Even after constructive notice a retiring partner may be held on principles of estoppel if he permits his name to be used in the firm. *Re* Krueger (1871) 2 Lowell 66; see Vernon *v.* Manhattan Co. *supra; cf.* Swigert *v.* Aspden (1893) 52 Minn. 565 and Willis *v.* Rector (1892) 50 Fed. 684.

[9]Davis *v.* Keyes (1868) 38 N. Y. 94; Prentiss *v.* Sinclair (1831) 5 Vt. 288. Knowledge on the part of an agent who is duly authorized to act in the transaction of the business is sufficient, Ach & Co. *v.* Barnes & Co. (1899) 107 Ky. 219, but the knowledge of a director not especially entrusted with the business is not enough to charge a corporation. Bank *v.* Weston *supra.*

[10]Carter *v.* Whalley (1830) 1 B. & Ad. 11.

to the world generally and also as to the particular creditor urging his claim;[11] other courts, especially those of New York, require not only secrecy but also inactivity.[12] The reason for the rule that dormant partners need not give notice would seem to be that credit has not been directly given to the firm upon the responsibility of one who is not known to be a partner.[13] To be sure the very fact that money has been contributed will to some extent affect the credit of the firm; and the activity of a member, even though not known, may increase the efficiency of a firm, and so strengthen its credit. It would seem, however, that the mere fact of activity should not make one a general partner unless the activity is known, when of course the partner would be a general member of the firm as to all having this knowledge.[14]

The implied authority of a partner after dissolution is limited primarily to closing the affairs of the concern, and even though notice has effectually terminated the general agency, persons can still deal with the partners and are protected to the extent of this authority.[15] In delimiting the agency, the courts of various jurisdictions have reached opposite results, and this can probably be explained only by the divergence of commercial custom in the different communities. One partner can nowhere create new obligations to bind the rest of the dissolved firm and so project the winding-up indefinitely into the future;[16] but theories of what constitutes a new obligation are very elastic. Firm goods may be sold,[17] credits collected,[18] and firm debts paid[19] by any of the ex-partners,[20] but firm notes cannot be given, even

[11]See Austin *v.* Appling (1891) 88 Ga. 54; Lieb & Son *v.* Craddock (1888) 87 Ky. 525. If the partner was dormant when the obligation was incurred, the creditor need not join him though he learns of his relation to the firm before suit is brought. North *v.* Bloss (1864) 30 N. Y. 374. A dormant partner is, of course, liable for obligations incurred by the firm while he is actually connected with it. Richardson *v.* Farmer (1865) 36 Mo. 35. If the firm title is A. & Co. all its members are general partners. *Cf.* Shamburg *v.* Ruggles (1876) 83 Pa. 148; Podrasnik *v.* R. T. Martin Co. (1887) 25 Ill. App. 300.

[12]E. I. & S. R. M. Co. *v.* Harris (1891) 124 N. Y. 280; see Bouker Contr. Co. *v.* Scribner (N. Y. 1900) 52 App. Div. 505; *cf.* North *v.* Bloss *supra.*

[13]Story, Partnership, § 159.

[14]Farrar *v.* Deflinne (1844) 1 C. & K. 580.

[15]See Burdick, Partnership, (2nd ed.) 237-252.

[16]Bass Co. *v.* Granite City Co. (1902) 116 Ga. 176. So goods cannot be accepted in performance of a unilateral contract. Bagel *v.* Miller, L. R. [1903] 2 K. B. 212.

[17]Robbins *v.* Fuller (1862) 24 N. Y. 570; but see Hogendobler *v.* Lyon (1873) 12 Kan. 276.

[18]Gillilan *v.* Sun etc. Ins. Co. (1869) 41 N. Y. 376; Major *v.* Hawkes (1850) 12 Ill. 298. This is true though the individual partner is insolvent.

[19]Milliken *v.* Loring (1854) 37 Me. 408.

[20]When there is no special agreement the partners have equal authority in the liquidation, Gray *v.* Green (1894) 142 N. Y. 316, and outstanding contracts can be completed. Rust *v.* Chisolm (1881) 57 Md. 376. It is competent for the partners to entrust the winding-up to one of their members, but this does not give him new powers, but merely secures his agency from interference by the others. Gilmore *v.* Ham (1894) 142 N. Y. 1; Bass Co. *v.* Granite City Co. *supra.*

though in renewal,[21] or negotiable paper endorsed even to pay existing obligations.[22] Although an appearance entered by one partner after dissolution cannot bind the others,[23] presentment of commercial paper to one partner is sufficient,[24] and these conclusions are hard to reconcile. Some jurisdictions even permit one partner to borrow money to pay firm debts,[25] and to pledge the assets of the concern.[26] The most fruitful field for conflict, however, is raised when one partner after dissolution assumes to bind the others by an admission. An account stated by one partner has been held binding on the others,[27] the same conclusion being reached in considering the effect of an oral admission of liability,[28] while a part payment or promise to pay a firm debt has been held to toll the Statute of Limitations as to all members of the firm.[29] The weight of authority would seem to be contrary to each of these propositions,[30] and since a new obligation is created in each instance, this seems the sounder result. A detailed examination of the cases in the particular jurisdiction is the only safe course to pursue when it becomes necessary to deal with a firm known to be in liquidation.

LIABILITY OF A SURETY WHEN THE PRINCIPAL OBLIGATION IS UNENFORCIBLE.—The fundamental rule in the law of suretyship that no collateral liability can exist in the absence of a primary obligation, is but an inevitable step from the *a priori* proposition that the contract of a surety is an undertaking to answer for the debt, default or miscarriage of another.[1] Cases in which the defendant is sought to be charged as a surety, and pleads that there is no liability on the part of his principal, however, fall into three classes: first, where the principal has a defense inherent in the primary obligation itself, and the defendant

[21]Bank *v.* Norton *supra; cf.* Richardson *v.* Moies (1862) 31 Mo. 437; Abel *v.* Sutton (1800) 3 Esp. 108.

[22]Parker *v.* Macomber (Mass. 1836) 18 Pick. 505; Woodson *v.* Wood (1888) 84 Va. 478. Special power to endorse is not included in a power to use the firm name "in liquidation." Woodson *v.* Wood *supra.*

[23]Hall *v.* Lanning (1875) 91 U. S. 160.

[24]Gates *v.* Beecher (1875) 60 N. Y. 518.

[25]See Butchart *v.* Dresser (1853) 10 Hare 453; Estate of Davis (Pa. 1840) 5 Whart. 530. It must be noted that in both of these cases the court found actual authority from the other partners.

[26]*In re* Clough (1885) L. R. 31 Ch. Div. 324. In Breen *v.* Richardson (1883) 6 Colo. 605, a trust deed of realty was upheld.

[27]Feigley *v.* Whitaker (1872) 22 Oh. St. 606.

[28]See Davis *v.* Poland (1895) 92 Va. 225.

[29]Merritt *v.* Day (1875) 38 N. J. L. 32. But in some jurisdictions if the Statute has completely run, part payment by one partner cannot bind the others. See Parker *v.* Butterworth (1884) 46 N. J. L. 244.

[30]Account stated, see for example, Hart *v.* Woodruff (N. Y. 1881) 24 Hun 510; admissions, Nichols *v.* White (1881) 85 N. Y. 531; Statute of Limitations, Van Keuren *v.* Parmalee (1849) 2 N. Y. 523; Tate *v.* Clement (1878) 16 Fla. 339. The case last cited asserts that this is the rule irrespective of notice to former dealers. It would seem, however, that former dealers without notice can rely on part payments or promises made by one partner. Forbes *v.* Garfield (N. Y. 1884) 32 Hun 389; Sage *v.* Ensign (Mass. 1851) 2 Allen 245.

[1]See King *v.* Summitt (1881) 73 Ind. 312.